

48A C.J.S. Judges § 231

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

A. In General

§ 231. Constitutional and statutory provisions—
Construction of constitutional and statutory provisions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#) 40

Constitutional disqualification provisions are rigidly enforced, while disqualifying statutes, whether liberally or strictly construed, should be given a reasonable construction.

Constitutional provisions, which are the basis for the disqualification of judges, are rigidly enforced.¹ The court must construe any ambiguity in such a constitutional provision to effectuate its purpose.² While there is authority that disqualifying statutes should be construed liberally³ to safeguard in both fact and appearance the constitutional right to a fair and impartial trial,⁴ there is also authority that they should be construed strictly⁵ in order to safeguard the judiciary from frivolous attacks upon its dignity and integrity, to prevent abuse, and to insure the orderly functioning of the judicial system.⁶ In any event, a recusal statute must not be construed so broadly that it becomes presumptive, and recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice.⁷ Disqualifying statutes should be given a reasonable

construction.⁸ The plain, obvious, and rational meaning of the language used in a rule providing for the disqualification of a judge is preferred over any other meaning.⁹

The disqualifying statute must be read in its entirety and each provision considered together so as to give effect to all sections where possible.¹⁰ Such a statute should be construed together with other statutes in pari materia, as for instance, with statutes dealing with change of venue when the disqualification is established.¹¹ Thus, a statute providing for certification of disqualification and a statute providing for change of venue may each be effective to obtain an impartial trial where there is no repugnancy.¹² Moreover, a statute providing for a change of judge and a statute providing for separate trials of persons accused in criminal cases may each be given effect unless there is an irreconcilable conflict between such statutes.¹³

Statutory amendments.

An amendment to a statute pertaining to the disqualification of a judge should not be given a retroactive effect.¹⁴ Thus, where an amendment to such a statute expressly provides that the amendment will not apply to the trial of any proceeding commenced prior to the date of the amendment, the amendment is not applicable to a suit which was filed before the amendment became effective.¹⁵ However, the amended version of the statute is applicable where the trial of the case commences after the effective date of the amendment.¹⁶

Code of judicial conduct.

The disqualification provisions of the American Bar Association's code of judicial conduct can only be construed as establishing a standard for judicial behavior rather than as imposing a mandatory duty enforceable after the fact by the reversal of otherwise proper judicial decisions.¹⁷

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Footnotes

- 1 Mass.—[Beauregard v. Dailey](#), 294 Mass. 315, 1 N.E.2d 481 (1936).
- 2 Tex.—[Tesco American, Inc. v. Strong Industries, Inc.](#), 221 S.W.3d 550 (Tex. 2006).
- 3 Ill.—[People v. Flowers](#), 47 Ill. App. 3d 809, 8 Ill. Dec. 268, 365 N.E.2d 506 (1st Dist. 1977).
- Minn.—[State v. Azure](#), 621 N.W.2d 721 (Minn. 2001).

New grounds not included in statute may not be engrafted by courts

N.Y.—*In re Robin O.*, 80 Misc. 2d 242, 362 N.Y.S.2d 688 (Fam. Ct. 1974).

4 Minn.—*State v. Azure*, 621 N.W.2d 721 (Minn. 2001).

5 Ariz.—*Lopez v. Kearney ex rel. County of Pima*, 222 Ariz. 133, 213 P.3d 282 (Ct. App. Div. 2 2009).

Federal disqualification provision not extending to district court of Virgin Islands

U.S.—*Lazofsky v. Sommerset Bus Co., Inc.*, 389 F. Supp. 1041 (E.D. N.Y. 1975).

6 Ariz.—*Bolding v. Hantman*, 214 Ariz. 96, 148 P.3d 1169 (Ct. App. Div. 2 2006).

7 U.S.—*Osmar v. City of Orlando*, 844 F. Supp. 2d 1242 (M.D. Fla. 2012).

8 N.M.—*State ex rel. Tittman v. McGhee*, 1937-NMSC-006, 41 N.M. 103, 64 P.2d 825 (1937).

9 Mo.—*State ex rel. Laffoon v. Youngdahl*, 391 S.W.2d 605 (Mo. Ct. App. 1965).

10 Kan.—*Hulme v. Woleslagel*, 208 Kan. 385, 493 P.2d 541 (1972).

11 Mont.—*State v. District Court of Fourth Judicial Dist., Ravalli County*, 58 Mont. 50, 190 P. 133 (1920).

As to change of venue on ground of inability to obtain fair and impartial trial, see C.J.S., *Venue* §§ 167 to 184.

12 Pa.—*In re Crawford's Estate*, 307 Pa. 102, 160 A. 585 (1931).

Statutes held not conflicting

Ind.—*State ex rel. Flaherty v. Ermston*, 209 Ind. 117, 197 N.E. 908 (1935).

14 Cal.—*Ball v. City Council of City of Coachella*, 252 Cal. App. 2d 136, 60 Cal. Rptr. 139 (4th Dist. 1967).

15 U.S.—*In re Virginia Elec. & Power Co.*, 539 F.2d 357 (4th Cir. 1976).

16 U.S.—*Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 54 A.L.R. Fed. 825 (5th Cir. 1980) (rejected on other grounds by, *Pashaian v. Eccelston Properties, Ltd.*, 88 F.3d 77 (2d Cir. 1996)).

17 U.S.—*U.S. v. Conforte*, 457 F. Supp. 641 (D. Nev. 1978), judgment aff'd, 624 F.2d 869 (9th Cir. 1980).

As to standards of conduct, see §§ 87 to 103.